



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. James E. Kilday, Director  
Motor Transportation Division  
Railroad Commissioner of Texas  
Austin, Texas

Dear Sir:

Opinion No. 0-1107 -  
Re: Does the Railroad Commission  
of Texas have authority to promul-  
gate rules and regulations apper-  
taining to the management and  
government of bus terminals?

We are in receipt of your letter of July 17, 1939, in which you request an opinion regarding the extent of the jurisdiction and authority of the Railroad Commission of Texas to promulgate rules and regulations governing the management of bus terminals in this state, and whether the particular rules and regulations contained in Motor Bus Docket No. 1345, submitted with your inquiry, are valid.

We quote the provisions of the law, which we believe pertinent in the premises:

"Art. 911a. - MOTOR BUS TRANSPORTATION AND  
REGULATION BY RAILROAD COMMISSION.

Section 4.

"(a) The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate the public service rendered by every motor bus company operating over the highways in this State, to fix or approve the maximum or minimum, or maximum and minimum, fares, rates or charges of, and to prescribe all rules and regulations necessary for the government of, each motor bus company; to prescribe the routes, schedules, service, and safety of operations of each such motor bus company; \* \* \*

Hon. James E. Kilday, Director, page #2

"(b) The Commission is hereby vested with authority to supervise, control and regulate all terminals of motor bus companies, including the location of facilities and charges to be made motor bus companies for the use of such terminal, or terminal; provided, that the Commission shall have no authority to interfere in any way with valid contracts existing between motor bus companies and the owner or owners of motor bus terminals at the time of the passage of this Act.

"(d) The Commission is further authorized and empowered to supervise and regulate motor bus companies in all other matters affecting the relationship between such motor bus companies and the traveling public that may be necessary to the efficient operation of this law."

"Sec. 12. \* \* \* The Commission shall have the power and authority under this Act (Art. 911a; P. C. Art. 1690a) to do and perform all necessary things to carry out the purpose, intent, and provisions of the Act (Art. 911a, P. C. Art. 1690a), whether herein specifically mentioned or not, and to that end may hold hearings at any place in Texas which it may designate."

We call your attention to the case of Highway Transportation Co. v. S. W. Greyhound Lines, 124 S. W. (2d) 433, Jan. 4, 1939. The court in this case had before it the question of whether or not the Commission had the power under "the Motor Bus Law, 4(b)" to require the use of terminals by bus lines other than those having contractual rights therein, and secondly if construed to confer such power, does it provide for notice and hearing to the affected parties. The court's opinion reads:

"The order is void, in any event, in that it was passed without notice or hearing.

"Since we are holding the order void on

another ground, it is not necessary to pass upon appellee's first ground, but will assume, for present purposes only, that the Motor Bus Law confers upon the Commission the power to make the order.

" \* \* \* The Commission is charged with the duty of determining, in the first instance, whether the application should be granted; and a wide discretion is vested in it in reaching its conclusion. Its discretionary powers are not subject to review; but review is confined to the issues whether the order is within the powers of the Commission and is supported by substantial evidence. To allow review of its orders otherwise factually would virtually transfer the administrative functions of the Commission to the courts; a function for which they are not equipped. We hold that before the Commission can pass a valid order subjecting the property of a carrier to use by another carrier and fixing the compensation for such use, the owner carrier is entitled to notice and hearing. \* \* \* (Highway Transportation Company v. S. W. Greyhound Lines, 124 S. W. (2d) 435).

We have felt it desirable to refer to the Highway Transportation case because of the implied doubt that it casts upon the validity of the subject regulatory statute by raising the question of whether it provides for notice and hearing as prerequisites of due process of law. It has been decided in this state, however, that where rules and regulations affect equally the entire industry or body being regulated, notice and hearing before their issuance is not necessary. Such is the case in respect to the subject rules and regulations under examination. This point was involved in the case of Greer v. Railroad Comm. of Texas, 117 S. W. (2d) 142, error dismissed:

"The Record shows that there were over 200 special commodity carriers operating under permits granted. There is no compelling reason why notice and hearing should be required

as prerequisite to the validity of a general rule and regulation of administrative boards. \* \* \* The intimate knowledge possessed by the Commission \* \* \* affords ample basis for dispensing with notice when general regulatory orders are concerned."

For matters not of a general nature, such as to require notice and hearing, we believe the statute provides for them. This question was left open by the court in the Highway Transportation case. The Commission is by Article 911a, Section 12, empowered among other things "to hear and determine all applications of motor bus companies; to determine complaints presented to it by motor bus companies \* \* \* or it may institute and investigate any matter pertaining to automobile passenger transportation for compensation or hire upon its own motion. The Commission \* \* \* shall have the power to compel the attendance of witnesses, swear witnesses, take their testimony under oath, make record thereof \* \* \*"

We have no doubt but that where hearing are necessary the Legislature intended that the Commission hold hearings and hold them in conformity to all requisites of due process including notice. While there is no specific requirement of hearings and notice, as seen, the Act, it seems to us clearly contemplates that such must be had.

"It has \* \* \* been determined that a statute is not invalid merely by reason of the fact that it does not expressly provide for notice and hearing. It may be implied by the courts, unless the language of the statute excludes the theory that notice and hearing are necessary." (Tatlow v. Bacon, 101 Kan. 26; 14 A.L.R. 269).

Now regarding the extent of the powers conferred, we construe these statutes to confer upon the railroad commission of Texas full and complete jurisdiction to promulgate all rules and regulations reasonably necessary to further the interest of the traveling public in the

Hon. James E. Kilday, Director, page #5

"public service rendered by every motor bus company." We believe that in regulating the public service, it necessarily follows that every function undertaken by a bus company exercised by it to the end of rendering service, is necessarily embodied in the term "public service". This would include the sale of tickets to the public, the rendition of full and complete information regarding routes, schedules, charges, etc. We believe that the loading and unloading of passengers at terminals, the location of terminals and the general management of terminals, all are component parts of the public service rendered. Each functions is necessary to the "convenience of the traveling public" and all go into the "conduct of the business."

Special reference is made to the latter part of subsection (b), quoted above, wherein the Commission is precluded from interfering with existing valid contracts between motor bus companies and owners of motor bus terminals. This specific prohibition necessarily implies the power in the Commission to "interfere" and regulate all such contracts entered into subsequent to the date of the Act.

Reference is made to the case of City of Bal-linger, et al v. Nichols, 297 S. W.- 480. In this case the Court of Civil Appeals, while it held a city ordinance purporting to regulate bus terminals invalid as being beyond the power of a municipality, the court did point out that the Legislature of the State had already delegated such power to the Railroad Commission of Texas. In discussing the case, the court said:

"The sixth section of the ordinance re-quires for this character of traffic, the ex-tablissement and maintenance of a central station or depot on sand discharging passengers or freight, makes it unlawful to take on or discharge pas-sengers or freight at any other point in the city.

"All reasonable traffic regulations, such as limit of speed (where not controlled by general law) designations of routes, general traffic rules affecting all motor vehicles, and such like matters, would seem to fall within the delegated powers. The provisions of Section

6 of the Ordinance, requiring establishment of one central depot, and inhibiting taking on or discharging of freight at any other point within the city, are, we think, regulations affecting the conduct of the business as a convenience to the traveling public, and cannot properly be classified as street traffic regulations. The state has authorized the business but has never delegated its regulation to municipal corporations. It may be noted in this connection that the Regular Session of the Legislature passed a comprehensive act vesting such regulations in the Railroad Commission. General Laws, Regular Session, Fortieth Legislature, ch. 270, p. 399, et seq. The establishment of depots clearly pertains to the conduct of the business of transportation, and is not a street traffic regulation."

In the case of Woolf v. Del Rio Motor Transportation Company, 27 S. W. (2d) 874, Court of Civil Appeals said:

"The Railroad Commission is vested with power to prescribe rules and regulations necessary for the government of motor bus companies, and routes and safety of operation of each motor bus company. There are details in the law that give general and specific power to the Commission, showing how completely the subject is placed within their power. It is not necessary to discuss or present citation of authorities on the subject."

In the case of State v. Public Service Commission 111 S. W. (2d) 982, in respect to a similar delegation of authority to the Public Service Commission of the State of Missouri, it was held:

"The purpose of the Legislature was to promote the welfare of the state by regulating Common Carriers by motor vehicle \* \* \* It thereby vested the Commission with certain positive powers, expressly conferred and also invested

it with all others necessary and proper to carry out fully and effectually all such powers so delegated, and necessary to give full effect to the act \* \* \* the Commission is authorized to make general rules where their promulgation 'are necessary or proper to enable it to carry out fully and effectually all the purposes of the Act'."

Regarding the interpretation of a similar grant of authority to an administrative Commission to regulate service of motor transportation companies, the court in the case of Motor Freight Express, et al v. Public Service Commission, Superior Court of Pennsylvania, 177 A, 490, held that "service" includes regulation of "interchange of freight" between different lines. "Public service" as it relates to motor bus transportation would by the same token include the "interchange of passengers" between different lines.

We cite without discussion the following cases where certain ordinances of cities were promulgated pursuant to authority to make general rules and regulations governing public service vehicles. They uniformly sustain the implied power to require the use of terminals where the specific authority to make such requirement was not given. So, in the present instance, where the Commission is specifically given authority to require use of terminals and to regulate their location, etc., it follows that particularly in view of the general delegation of authority in subsection (d) of Section 4, that the Commission has the power to promulgate detail regulations for the terminals.

Ex Parte Stallcup (1920) 220 S. W. 547;  
Ex Parte Parr (Ct. Crim. App. (1919)), 200 S.  
W. 404;  
Kissinger v. Hay (1908) 52 Tex. Civ. App. 295;  
Commonwealth of Massachusetts v. Rice, 158 N.  
E. 797;  
Corporation Commission of No. Carolina v.  
Transportation Commission, 151 S. W. 648, 198  
No. Carolina, 317;  
Peoples Rapid Transit v. Atlantic City, 144 A,  
63.

James E. Kilday, Director, page #8

You request our opinion regarding the validity of each of the rules and regulations contained in your Motor Bus Docket No. 1345. They are too lengthy to copy here, but upon consideration of each we believe them all to be within the jurisdiction of the Commission to promulgate. That the Legislature has mentioned expressly certain powers, the rule of implied exclusion as to others does not here obtain, because, first, of the very general grant found in subdivisions (a) and (d) of Section 4, Article 911a; second, the specific enumeration of certain powers in subsection (b) follows a general grant and comes after the word "including"; third Section 12 of the Act grants the Commission power and authority to do all necessary things to carry out the purpose and intent of the Act "whether herein specifically mentioned or not." A reading of the record of the hearing held by the Commission regarding these rules and regulations reveals that there is substantial evidence supporting the findings of the Commission upon which the subject rules and regulations are based. It is our opinion that they are valid.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Hugh Q. Buck  
Assistant

HQB:ob

APPROVED AUG. 23, 1939  
GERALD C. MANN  
ATTORNEY GENERAL OF TEXAS

Approved:  
OPINION COMMITTEE  
By RWF, Chairman